84-1319

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS

No.

In the Supreme Court of the United States

NEAL H. DENSMORE
Petitioner

v

CITY OF BOCA RATON, FLORIDA;
DONALD R. CRAWFORD, individually
and as City Manager of the City;
WILLIAM K. HOWELL, individually
and as City Attorney for the City,
Respondents.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

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QUESTIONS PRESENTED

1. WHETHER IT IS A DENIAL OF DUE PROCESS OF LAW PRESCRIBED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION FOR A GOVERNMENT EMPLOYEE TO BE DISCHARGED FROM PUBLIC EMPLOYMENT WITHOUT FIRST BEING AFFORDED A PRE-TERMINATION HEARING WHEN THE DISCHARGE AND ATTENDANT CIRCUMSTANCES INFRINGE UPON THE EMPLOYEE'S PROPERTY AND LIBERTY INTERESTS IN CONTINUED EMPLOYMENT?

2. WHETHER THE DEFENSE OF GOOD FAITH IS AVAILABLE TO A GOVERNMENT IN A CIVIL RIGHTS CASE BROUGHT UNDER 42 U.S.C. § 1983 AND WHETHER THE DEFENSE OF GOOD FAITH IS AVAILABLE TO GOVERNMENT OFFICIALS WHERE THEIR ACTS CONTRAVENE SETTLED, INDISPUTABLE LAW OR WHERE THEY ACT ARBITRARY, FANCIFUL OR CLEARLY UNREASONABLE?

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2. THE DEFENSE OF GOOD FAITH IS NOT AVAILABLE TO A GOVERNMENT IN A CIVIL RIGHTS CASE BROUGHT UNDER 42 U.S.C. §1983 AND THE DEFENSE OF GOOD FAITH IS NOT AVAILABLE TO GOVERNMENT OFFICIALS WHERE THEIR ACTS CONTRAVENE SETTLED, INDISPUTABLE LAW OR WHERE THEY ACT ARBITRARY, FANCIFUL OR CLEARLY UNREASONABLE 3

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

NEAL H. DENSMORE, by and through his Attorney, RICHARD E. BOSSE, petitions herein for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit affirming the trial court's judgment finding that Respondents did not violate Petitioner's rights secured by 42 U.S.C. § 1983 and that Respondents did not deprive Petitioner of his property and liberty interests without due process of law in violation of the rights secured to him under the Fifth and Fourteenth Amendments to the United States Constitution.

JURISDICTION

The Judgment sought to be reviewed was filed October 15, 1984. *Judgment of the Eleventh Circuit Court of Appeals*, Appendix K at 1. On November 21, 1984 the United States Court of Appeals for the Eleventh Circuit denied Petitioner's petition for rehearing and suggestion for rehearing en banc. *Order of the Eleventh Circuit Court of Appeals on Rehearing*, Appendix L at 1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. XIV, § 1, provides, in pertinent part:

No State shall deprive any person of life, liberty, or property without due process of law.

Title 42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This was a civil action brought before the United States District Court, Southern District of Florida, by the Petitioner, NEAL H. LENSMORE, for compensatory and punitive damages for violations of rights secured by Title 42 U.S.C. § 1983. The Respondents were CITY OF BOCA RATON, FLORIDA, DONALD R. CRAWFORD, individually and as City Manager of the City, and WILLIAM K. HOWELL, individually and as City Attorney for the City. The Petitioner alleged that the actions of the Respondents in their termination of Petitioner from his employment without a hearing prior to his discharge with the City of Boca Raton, deprived him of property without due process of law in violation of rights secured to him under the Fifth and Fourteenth Amendments to the United States Constitution.

Petitioner further alleged that the termination of his employment from the City by Respondents deprived him of a liberty interest secured to him by the Fourteenth Amendment to the United States Constitution. Petitioner alleged that his liberty interest was infringed upon when the Respondents terminated him with attendant publicity, seriously damaging his professional reputation in the community as an electrical inspector, thereby depriving him of liberty he would have enjoyed in seeking another electrical inspector position. Petitioner alleged in Count II of his Amended Complaint that the Respondents had violated 42 U.S.C. § 1983 in that Respondents conspired to interfere with his civil rights by depriving him of his property and liberty interests in his employment.

In or about October, 1975, the City of Boca Raton, by and through its City Council, commissioned two local attorneys to perform an investigation of alleged wrongdoing in the Building Department of the City of Boca Raton. Such investigation was performed with extensive attendant publicity. Petitioner had been an electrical inspector with the Boca Raton Building Department for fifteen (15) years prior to October, 1975. On or about December 15, 1975, the investigative attorneys deliver-

ed to the Boca Raton City Council a "secret report", which was the result of their alleged investigation into the Building Department. The City Council turned the report over to the Respondents, CRAWFORD and HOWELL, with instructions to continue the investigations, taking whatever steps were appropriate and not to release the report to the press or public.

As a result of the investigation and on the basis of information contained within the report, on or about December 18, 1975, CRAWFORD, with the approval and authority of the City Council of the City of Boca Raton, terminated Petitioner's employment with the City of Boca Raton. Petitioner's termination was effectuated by means of a letter addressed to him dated December 18, 1975. The letter stated in vague charges that the Petitioner was guilty of taking and conspiring to take unlawful compensation on four (4) construction sites. *Amended Complaint*, Appendix A at 4 . That simultaneously with the execution of this letter, Respondents CRAWFORD and HOWELL caused a press release to be issued disseminating to the public that on the basis of findings as contained in the "secret report", Petitioner was terminated.

On or about December 22, 1975, Respondent, CRAWFORD, released for public dissemination the letter of termination dated December 18, 1975, to the press, so that the charges of felonious conduct made in the letter appeared and were published in all leading newspapers in South Florida, including the *Boca Raton News*, the *Miami Herald*, the *Fort Lauderdale Sun Sentinel*, the *Fort Lauderdale News*, the *Palm Beach Post*, and the *Palm Beach Times*. The charges contained in the termination letter, and as printed in the newspaper articles, were totally false as established by the Petitioner at trial by calling all witnesses with direct evidence named in the report. The Respondents have not refuted the same.

During this time, the Petitioner was never afforded the information or "secret report" upon which the charges and the termination letter were based so that he could properly apprise himself and defend the same.

Pursuant to the Personnel Rules and Regulations of the City of Boca Raton and upon request, the Respondents held a review before the City Manager on December 29, 1975. At such review, the charges were read publicly to the Petitioner and press and the Petitioner was invited to refute them. Again, the Respondents refused to divulge any information upon which the charges were based or the "secret report" so that the Petitioner had nothing to refute. The Petitioner vehemently objected to such unconstitutional procedure but to no avail, except for the amending of a vague charge in his termination letter in an attempt by the Respondents to make it less ambiguous. *Amended Complaint*, Appendix A at 7 .

Petitioner was never afforded notice and a hearing *prior* to the termination of his employment. He was never given the opportunity to show the Respondents they were wrong before his family, friends, neighbors, and the public in South Florida were told by the Respondents that he was a criminal.

The case was submitted to the jury. The trial court failed and refused to instruct the jury that the Petitioner was entitled to a hearing *prior* to his discharge even after they had requested further instructions on this point. Without such instruction, the jury returned a verdict finding the Respondents did not violate or conspire to violate Petitioner's federal constitutional rights. *Jury Verdict*, Appendix I at 1. A judgment on the jury verdict was entered and the Petitioner appealed to the Eleventh Circuit Court of Appeals. *Judgment of the District Court*, Appendix J at 1. The Court of Appeals affirmed. From that decision, Petitioner has filed this Petition for Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

The decision of the Eleventh Circuit Court of Appeals in this cause conflicts with the decision of the Tenth Circuit Court of Appeals in *Miller v. City of Mission*, 705 F. 2d 368 (10th Cir. 1983), as to the right of a government employee who has a property and liberty interest in his employment to be afforded a hearing *prior* to discharge. The decision in

Miller v. City of Mission, *supra*, is a natural extension of the procedural due process safeguards which this Court has enunciated in *Bishop v. Wood*, 426 U.S. 341, 96 S. Ct. 2074, 48 L. Ed. 2d 684 (1976) and *Owen v. City of Independence*, 445 U.S. 622, 100 S. Ct. 1398, 63 L. Ed. 2d 673 (1980).

The Petitioner had a property interest in his employment. A property interest is created by ordinance or implied by contract. *Bishop v. Wood*, *supra*. Pursuant to the Personnel Rules and Regulations of the City of Boca Raton, Petitioner could not be dismissed except for cause. *City of Boca Raton, Florida, Personnel Rules and Regulations, Article XIII*, Appendix D at 1 . The Eleventh Circuit in *Hearn v. City of Gainesville*, 688 F. 2d 1328 (11th Cir. 1982) has determined that Florida law holds as such. Respondents had contested this through trial but dismissed such argument when the jury was instructed and have not raised the same since.

When the Petitioner was dismissed with the release of his termination letter to the press, which called him a criminal and which received prominent coverage in the press, he was deprived of his liberty interes without due process of law. As this Court reasoned in *Owen v. City of Independence*, *supra*, such a discharge, accompanied with defamatory and stigmatizing charges released to the public, triggers procedural due process safeguards requiring a hearing at which the employee can refute the charges and clear his name. The Tenth Circuit in *Miller v. City of Mission*, *supra*, has extended this reasoning and placed great importance on such rights by requiring this hearing to be *prior* and *before* the termination unless an emergency prevents such. The Eleventh Circuit Court of Appeals in its decision below refuses to follow such reasoning and conflicts with the same.

Such liberty interest is important because such publicity on an innocent man can ruin his life. As the Court stated in *Miller v. City of Mission*, *supra*, his good name, reputation, honor and integrity can be lost and the freedom to take advantage of other employment opportunities foregone.

Petitioner was not "on the take". Petitioner clearly established in the trial court that the "secret report" upon which his termination was based was a sham and replete with falsehoods. In fact, testimony elicited from the witnesses named in the report in the trial court crystallized the innocence of the Petitioner. Petitioner was nothing more than an innocent civil service employee who was used as a political pawn to advance the political objectives and careers of the individual Respondents. In so doing, his life and career were ruined, and he was defamed in front of his family, friends and business associates and was unable to procure any employment in his chosen livelihood. Other adverse repercussions followed. Based upon the "secret report", he was charged by the State Attorney's office with felonious criminal conduct. As a result of these false accusations, he also was later audited and investigated by the Internal Revenue Service. The State Attorney's prosecution was dismissed prior to trial with prejudice for lack of any evidence of any offer or receipt of any unlawful compensation. After a thorough and complete investigation and audit, the Internal Revenue Service found no evidence of any illegal compensation or unreported income or income not earned as salary.

It is undisputed that Petitioner was not afforded a hearing *prior* to his discharge. It was undisputed at trial and therefore was not an issue of fact for the jury's consideration. The trial court, though, instructed the jury that they were to determine whether the Petitioner received adequate notice and a hearing and if such hearing was at a meaningful time and in a meaningful manner. *Court Instruction*, Appendix F at 1. The jury became confused. They requested a further instruction and in part asked, "Does the employee have the right to the above review before the press is informed of the charges?" *Court Exhibit 1*, Appendix G at 1. The trial court then compounded the jury's confusion by answering the question with the following instructions:

. . . The hearing must be held at a meaningful time and in a meaningful manner. What is meaningful under the cir-

> cumstances of the case is for you as judges of the facts to determine.
>
> Thus, whether the review should be private or public or whether the press should be informed at this or that time, and at what time the hearing should be held . . . are all questions for you to decide. *Court Exhibit 3*, Appendix H at 1.

The trial court requested the jury to determine the resolution of a constitutional right regarding due process which was beyond the province of the jury and is a decision of constitutional law which should have been determined by the court as in *Miller v. City of Mission*, *supra*. The Eleventh Circuit Court of Appeals in affirming this action has determined that a prior hearing is not mandated and is in conflict with the Tenth Circuit in *Miller v. City of Mission*, *supra*.

The right to a *prior* hearing is the most important and crucial element to the safeguard of liberty and due process as encompassed within the Fourteenth Amendment. As the court enunciated in *Miller v. City of Mission*, *supra*, and as this Court has enunciated in *Owen v. City of Independence*, *supra*, more than a property interest is at stake. The governmental employee has an additional liberty interest. When only a property interest is at stake, this Court has reasoned in *Fuentes v. Shevin*, 407 U.S. 67, 92, S. Ct. 1983, 32 L. Ed. 2d 556 (1972), that due process of law requires a prior opportunity to be heard before chattels are taken (in this case Mrs. Fuente's stove). The analysis is based upon this Court's earlier determination in *Boddie v. Connecticut*, 401 U.S. 371, 378, 91 S. Ct. 780, 786, 28 L Ed. 2d 113 (1971):

> That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest , . . .

The interest of the Petitioner and governmental employees who have a property interest in their job is much greater in that they not only have a property interest at stake but an

additional far more important liberty interest, i.e., the protection of their good names, reputation, honor and integrity, the freedom to take advantage of other employment opportunities and to make a living at their chosen livelihood. It is this additional greater liberty interest which the Court enunciated in *Owen v. City of Independence*, *supra*, and it is the liberty which is the cornerstone and foundation of this country's freedoms. It is the liberty interest which the Tenth Circuit in *Miller v. City of Mission*, *supra*, sacredly attempts to protect. Thus, pursuant to *Fuentes*, the Petitioner and government employees, just on their property interest alone, before the more important liberty interest is considered, are entitled to a hearing prior to and before the deprivation of such property interest. A fortiori, they must be entitled to the same before their property interest and additional liberty interest are deprived and they are defamed and inhibited from further employment.

Respondents have argued in the Court of Appeals for the first time that the Petitioner was not entitled to a pre-termination hearing because his continued employment endangered the health, safety and welfare of the citizens of Boca Raton, Florida. This obvious attempt to bring themselves under the language of *Miller v. City of Mission*, *supra*, as to an emergency situation is not well taken because it was never pled, argued nor jury instruction requested in the trial court. Such cannot be initially introduced at the appellate level. Further, there was simply no emergency which existed which would justify a failure to afford Petitioner a pre-termination hearing. *Miller v. City of Mission*, *supra*.

However, as this Court noted in *Fuentes v. Shevin*, 407 U.S. 67 at 90, "There are 'extraordinary situations' that justify postponing notice and opportunity for a hearing." As this Court further stated at page 90:

> Only in a few limited situations has this Court allowed outright seizure without opportunity for a prior hearing. First, in each case, the seizure has been directly necessary to secure an important govern-

> mental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force; the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance.

Respondents have never pled nor proved the elements required by this Court to deprive Petitioner of his property interest without a *prior* hearing. *Answers to Amended Complaint filed by Respondents*, Appendices B an C at 1. The Respondents have never pled nor proved that the determination was made to deny him the prior hearing under the standards of a narrowly drawn statute. They cannot, because there is none. This, of course, does not take into consideration a government employee's additional liberty interest not to be defamed in the press without the prior opportunity to be heard.

The trial court also committed reversible error in its instructions to the jury on the Respondents' defense of good faith. The court instructed:

> If the Defendants reasonably believe that they were acting by authority of a valid state law or a county rule or regulation, and acted in good faith on the basis of this belief, their reasonable belief in good faith action constitutes a defense to the Plaintiff's claim, even though the state or county rule or regulation may have been invalid. *Court Instruction*, Appendix E at 1.

This was the only instruction the court gave with respect to the defense of good faith. It is fatally defective because it failed to advise the jury which Respondent was entitled to the defense of good faith. In *Owen v. City of Independence*, 445 U.S. 622, 100 S. Ct. 1398, 63 L. Ed. 2d 673 (1980), this Court held that a municipality has no immunity from liability under the Civil Rights Act, flowing from its constitutional violations, and may not assert the good faith

of its officers or agents as a defense to liability under 42 U.S.C. § 1983. The trial court failed to make such distinction in its instructions.

The Petitioner would further put forth the proposition or request the Court to address the issue that Respondents HOWELL and CRAWFORD lost their cloak of qualified immunity because their acts contravened settled, indisputable law or were so likely to produce injury that only harm can be characterized as substantially certain to result. In December of 1975 the settled, indisputable law in the State of Florida was that any termination letter given to Petitioner was confidential and not subject to public disclosure. The Florida Second District Court of Appeals Decision in *Wisher v. News-Press Publishing Co.*, 310 So. 2d 345 (Fla. 2d DCA 1975) held that personnel files and records were confidential and not subject to disclosure under the Florida Public Records Act. Respondents, CRAWFORD and HOWELL, were not only aware of this decision, they were intimately familiar with it. They had discussed it. In fact, at the time, they were defending a suit from the Boca Raton News seeking the "secret report" prepared against Petitioner based upon the *Wisher* decision. *See State of Florida ex rel. Veale v. City of Boca Raton*, 353 So 2d 1194 (Fla. 4th DCA 1977). The Florida Supreme Court overturned the Florida Second District Court of Appeals in *Wisher v. News-Press Publishing Co.*, *supra*, and held that personnel files are not confidential under Florida law. *News-Press Publishing Co. v. Wisher*, 345 So 2d 646 (Fla. 1977). This did not occur though until 1977.

The Fifth Circuit has held that in such instances the public official loses his cloak of qualified immunity. In *Jackson v. Mississippi*, 644 F. 2d 1142 (5th Cir. 1981), the Court held that an official, even if he is acting in sincere subjective belief that he is doing right, loses his cloak of qualified immunity if his actions contravene settled, indisputable law. In *Douthit v. Jones*, 619 F. 2d 527 (5th Cir. 1980), the Court found that government officials were not entitled to qualified immunity defenses when the action they took was

so likely to produce injury that harm can be characterized as substantially certain to result. Thus, the Eleventh Circuit Court of Appeals' failure to reverse the judgment of the trial court contradicts the Court's determination of the law for municipal governments and conflicts with the Fifth Circuit as to the individual Respondents' loss of qualified immunity.

This case is deserving of the Court's review because it involves constitutional rights of public employees in government. The importance of the issues presented here are magnified when it is considered that this is the only resort for local and state employees who are wronged in such manner. Executive officials under common and state law enjoy an absolute immunity with respect to defamatory and libelous publications made in connection with the performance of their official duties, *McNayr v. Kelly*, 194 So. 2d 428 (Fla. 1966), 50 Am. Jur. 2d *Libel & Slander* § 222 (1970). Moreover, in *Densmore v. City of Boca Raton*, 368 So 2d 945 (Fla. 4th DCA 1979), the Florida Fourth District Court of Appeals held that the City Manager enjoyed an absolute privilege in disclosing the reasons for discharge of the Petitioner herein.

It should be noted that federal employees are not subject to such abuse. Under the Freedom of Information Act, 5 U.S.C. § 552 (b) (6), personnel files are privileged and confidential. Therefore, they can never be deprived of their liberty interest in their employment because the reasons for the discharge cannot be disseminated publicly. Unfortunately, the remaining local and state employees, comprising over three-fourths of all government workers, have no such safeguards. U.S. Department of Commerce, Statistical Abstract of the United States 429 (104th ed. 1984).

In light of these circumstances, the liberty and property interests in a governmental worker's employment must be vigorously safeguarded and protected. The decision below contravenes these principles and conflicts with the Tenth Circuit's continued application of the analysis and reasoning for the protection of these rights as enunciated by this Court

in *Owen v. City of Independence*, *supra*. Such Constitutional rights are not protected when a government employee does not have the opportunity to exhibit to his superiors by a prior hearing that their allegations for termination are incorrect. Thus, without such opportunity, he is subject to the destruction of his career through neglect, inadvertence and intentional malfeasance of his superiors without any opportunity of correcting the same. Such nonpolitical government employees become political pawns subject to the whims and caprices of their superiors for the advancement and aggrandisement of their own careers.

The Court in *Fuentes v. Shevin*, *supra*, has mandated that a *prior* hearing is required for personal property. The Court should address this identical issue for governmental employees who have a proprietary interest in their employment. Such decision can affect the careers of over seventy-five percent (75%) of all public employees. Further, the Court has not addressed this area since *Owen v. City of Independence*, *supra*. Moreover, it has been inherent in Anglo-Saxon heritage and philosophy that liberty and a man's reputation are far more important and deserving of sacred protection than property. The Declaration of Independence describes "life, liberty and the pursuit of happiness." As Shakespeare said in Othello:

> Who steals my purse steals trash; 'tis something, nothing;
> 'Twas mine, 'tis his, and has been slave to thousands;
> But he that filches from me my good name
> Robs me of that which not enriches him
> And makes me poor indeed.

Therefore, review by this Court will determine the rights of governmental employees in their property and additional liberty interests in the same vein as the Court found it necessary to determine such rights in chattels.

CONCLUSION

Based upon the authorities and arguments advanced herein, Petitioner respectfully requests that this most Honorable Court grant his Petition for Writ of Certiorari, or in the alternative, that the Order of the Eleventh Circuit Court of Appeals be summarily reversed.

Respectfully submitted:

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APPENDIX A

No. 79-8375-CIV-JCP
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,)
Plaintiff,)
v)
CITY OF BOCA RATON, FLORIDA:)
DONALD R. CRAWFORD, individually)
and as City Manager of the City,)
WILLIAM K. HOWELL, individually)
and as City Attorney of the City,)
RICHARD SHERER, individually and)
as Police Officer and Detective of the)
City.)
)
Defendants.)

AMENDED COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES

JURISDICTION

1. Federal jurisdiction is invoked pursuant to Title 28 U.S.C. §§1331 and 1343. This is an action authorized by law to redress the deprivation under color of law, statutes, regulations, customs and usages of the State of Florida and ordinances, regulations, customs and usages of the City of Boca Raton, a political subdivision of the State of Florida, of the rights, privileges and immunities secured to the plaintiff by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments of the Constitution of the United States and by certain acts of Congress providing for equal rights of citizens and of all persons within the jurisdiction of the United States, to recover damages and secure other relief under certain acts of Congress for the protection of Civil Rights; and pursuant to the federal courts' pendant juris-

diction to hear claims arising under the laws of Florida upon which relief can be granted arising out of similar facts.

2. This is a civil action for compensatory and punitive damages for violations of rights secured by Title 42, United States Code, Sections 1983 and 1985 (41 U.S.C.A. §§1983 and 1985) and certain other laws of Congress, the Constitution of the United States, the Florida Constitution, Florida Statutes and common law respecting the rights of municipal employees to the right to enjoy privacy and sanctity, and to be free of unwarranted and unlawful governmental invasion of the privacy of his life, the right to procedural due process before his property in the form of his employment is taken attended by publicity and the loss of his liberty interest therein, and to be free from malicious prosecution.

3. The matter in controversy exceeds, exclusive of interest and cost, the sum of $10,000.

PARTIES

4. The plaintiff, NEAL H. DENSMORE, is a citizen of the United States and is a resident of the City of Boca Raton and had been employed by the defendant, the CITY OF BOCA RATON, a municipal corporation, as an electrical inspector within the Building Department within the City of Boca Raton for fifteen years prior to December 18, 1975 when he was discharged from said position. During this entire period of fifteen years, his performance ratings had been evaluated as satisfactory, very satisfactory and exceptional, and his personnel file was that of an exemplary employee.

5. The defendant, the CITY OF BOCA RATON, Florida, is a municipal corporation duly authorized and existing under the laws of the State of Florida.

6. The defendant, DONALD CRAWFORD, at the time of the occurrences hereinafter referred to, was the City Manager of the City of Boca Raton, appointed by the City Council of said city and vested with all the authority empowered upon him by the ordinances of the City of Boca Raton and the laws of the State of Florida. Since the incidences complained of, he

has been dismissed by the City Council. He is sued in his individual and official capacity.

7. Defendant, WILLIAM K. HOWELL, was City Attorney at the time of the occurrences hereinafter described. Since the incidents complained of, he has resigned his position with the City of Boca Raton. He is sued in his individual and official capacity.

8. Defendant, RICHARD SHERER, was, at the time of the occurrences hereinafter described, and presently is, a police officer and a detective with the City of Boca Raton. He is sued in his individual and official capacities.

9. At all material times to this Complaint, all defendants named individually above were acting under the color of the authority given by the laws of the State of Florida and the ordinances, rules and regulations of the State of Florida and defendant city as indicated by their title, their identification, their offices, and official papers of appointment.

10. At all material times the individual defendants named acted separately and in concert, under color and pretense of state law, that is, under the guise of statute, ordinances, regulations, customs and usages of the State of Florida and the defendant city. Each of the individual defendants, separately and in concert, engaged in the illegal conduct hereafter related to the injury and damage of the plaintiff, depriving him of his rights, privileges and immunities secured to him by the Constitution and the laws of the United States, and by the Constitution and laws of the State of Florida.

FACTUAL ALLEGATIONS

11. The defendant, the CITY OF BOCA RATON, by and through its City Council, in October, 1975, commissioned J. J. Reynolds, Esq. and Lawrence Marchbanks, Esq. to perform an investigation of alleged wrongdoings in the Building Department of the City of Boca Raton.

12. On or about December 15, 1975, Reynolds and Marchbanks delivered to the City Council for the defendant, the CITY OF BOCA RATON, a "secret report" hereinafter re-

ferred to as the Reynolds and Marchbanks report which was the result of their alleged investigation into the wrongdoings of the Building Department of the City of Boca Raton.

13. The City Council immediately turned the secret Reynolds and Marchbanks report over to the defendants, DONALD CRAWFORD and WILLIAM K. HOWELL, with the instructions to continue the investigations, to take whatever steps were appropriate as a result of the Reynolds and Marchbanks report, and not to release the report to the press or public, but the same was to remain confidential.

14. As a result of said investigation and the alleged Reynolds and Marchbanks report therefrom, and on the basis of the information contained therein, and before pursuing a reasonable and fair investigation, on or about December 18, 1975, the defendant, DONALD CRAWFORD, with the approval and authority of the City Council of the CITY OF BOCA RATON, terminated the plaintiff's, NEAL H. DENSMORE, employment with the City of Boca Raton.

15. The Defendant, DONALD CRAWFORD, effectuated the plaintiff's, NEAL H. DENSMORE, termination by means of a letter addressed to the plaintiff, NEAL H. DENSMORE, dated December 18, 1975, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "A" which stated in part:

(a) That while employed by the City of Boca Raton, in an official capacity, on that certain construction project in the City of Boca Raton, known as "Boca South", you did conspire to take unlawful compensation.

(b) That while acting in an official capacity as an employee of the City of Boca Raton, on that certain construction site of an apartment building at or about 53rd Street in the City of Boca Raton, you did conspire to take unlawful compensation.

(c) That while acting in an official capacity as an employee of the City of Boca Raton, on that cer-

tain construction site in the City of Boca Raton, known as "Centre Hill Court", you did take unlawful compensation.

(d) That while acting in an official capacity as an employee of the City of Boca Raton, on that certain construction site in the City of Boca Raton, known as "Admiral's Walk", you did take unlawful compensation.

16. On or about December 22, 1975, the defendent, DONALD CRAWFORD, either himself or his lawful authorized agent, released for public dissemination the aforementioned letter addressed to Neal Densmore, plaintiff's Exhibit "A", to the press so that on December 23, 1975, those statements referred to in paragraph 15 hereof were published in the *Boca Raton News* on the front page, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "B"; on or about December 25, 1975, said statements were published in the *Miami Herald*, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "C"; on or about December 24, 1975, said statements were published in the *Palm Beach Post*, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "D"; on or about December 24, 1975, said statements were published in the *Fort Lauderdale Sun Sentinel*, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "E"; on or about December 24, 1975, said statements were published in the *Palm Beach Times*, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "F". Furthermore, it is believed by plaintiff that further articles unknown to the plaintiff at this time appeared in other Florida newspapers, and if discovered the plaintiff respectfully requests leave of the Court to amend his Complaint to include those articles.

17. Pursuant to Section 3, Article XIII of the Personnel Rules and Regulations of the City of Boca Raton, Mr. Densmore, on December 22, 1975, by letter delivered that date

repudiated the charges and requested a review before the City Manager. Pursuant to the above referenced section, the City Manager was to set said date and time for review which review was to have been within three days of the request. Section 3, Article XIII of the Personnel Rules and Regulations of the City of Boca Raton, provides as follows, to wit:

> The City Manager shall furnish the employee whom he proposes to remove from the city service with a written statement outlining, in detail, reasons for the proposed removal and the date and time said removal becomes effective. A copy of the above mentioned statement shall also be furnished the Personnel Director. The employee under notice of removal, shall be given three business days in which to reply, to refute charges filed against him or request a review of his case by the City Manager. Such reply and/or request must be made in writing.
>
> The City Manager shall also set a date and time for review of the case if requested which shall be within three business days from the date he received the employee's request for such review, and shall notify the Personnel Director and the employee of such date and time.

18. The review was not held until December 29, 1975 as reflected by that letter of December 23, 1975, from the Personnel Director, Frank D. Schuyler, to the petitioner, a copy of which is attached and made a part hereof as Exhibit "G". On December 29, 1975, the defendant, DONALD CRAWFORD, with the authority, consent, and approval of the City of Boca Raton, held a review with the plaintiff, in public, of the statements of guilt as embodied in the letter of December 18, 1975, plaintiff's Exhibit "A", at which review the defendant, DONALD CRAWFORD, with the authority, consent and approval of the City of Boca Raton, and its mayor and City Council, had invited the press to which the press did attend.

19. On or about December 29, 1975, the plaintiff accompanied with his counsel, attended said review and vehemently objected to the improper and illegal procedure which the city had maintained. Furthermore, the plaintiff, NEAL H. DENSMORE, demanded to know the basis of the charges made against him so that a review could adequately be had so he could properly defend himself accordingly. He further demanded to inspect the secret Reynolds and Marchbanks report so that he could be apprised of the factual basis as to his public discharge and the charges made against him. He further objected to the release of the letter of December 18, 1975, Exhibit "A" and the invitation and attendance of the press to such review.

20. The defendants, DONALD CRAWFORD and WILLIAM K. HOWELL, on behalf of the defendant, the CITY OF BOCA RATON, refused to deliver said report to the plaintiff so that he could properly defend himself, and further refused to advise the plaintiff as to the factual basis of the charges against him. The plaintiff vehemently objected to such procedures and his denial of due process.

21. At said review and on December 29, 1975, the defendant, DONALD CRAWFORD, amended his aforementioned letter of December 18, 1975, so that subparagraph (b) of page 2 of his letter of December 18, 1975 read:

> "That you did solicit to take unlawful compensation from one Louis Strange in connection with the plans for electrical contract work at an apartment at or near 51st Street in Boca Raton, Florida."

by means of a letter addressed to Neal Densmore, dated December 29, 1975, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "H".

22. On December 29, 1975, the defendant, DONALD CRAWFORD, released for public dissemination, the aforementioned letter addressed to Neal Densmore, of December 29, 1975, to the press so that on December 30, 1975, those

statements referred to in paragraph 21 hereof were published in the *Boca Raton News*, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "I"; the *Miami Herald*, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "J"; the *Palm Beach Times*, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "K"; and the *Fort Lauderdale Sun Sentinel*, a true and correct copy of which is attached hereto and made a part hereof as plaintiff's Exhibit "L". Furthermore, it is believed by the plaintiff that further articles unknown to the plaintiff at this time appeared in other Florida newspapers and if discovered, the plaintiff respectfully requests leave of the Court to amend his Complaint to include those articles.

23. The statements as referred to in Exhibits "A" through "F" and "H" through "L" inclusive are completely false and unfounded.

24. Pursuant to the Personnel Rules and Regulations of the City of Boca Raton, the plaintiff requested an appeal and hearing before the Civil Service Board.

25. The city on behalf of the Civil Service Board and on advice of the defendants HOWELL and CRAWFORD, refused the plaintiff such a review and further refused the plaintiff of the factual basis of the charges against him or a copy of the Reynolds and Marchbanks report. A copy of the letter to the chairman of the Civil Service Board of January 26, 1976 is attached hereto and made part hereof as plaintiff's Exhibit "M".

26. On February 26, 1976, your plaintiff filed a lawsuit in the Fifteenth Judicial Circuit Court, in and for Palm Beach County in the State of Florida, against the defendant, the CITY OF BOCA RATON and the defendant, DONALD CRAWFORD, alleging defamation and libel and slander. Said suit was subsequently dismissed prior to trial on the basis of "executive privilege" extended to public officers.

27. During the course of discovery in the above entitled

action, the defendants, the CITY OF BOCA RATON, DONALD CRAWFORD and WILLIAM K. HOWELL, were put on notice and obtained knowledge that the original four charges of criminal misconduct contained in the letter of December 18, 1975 as amended in the letter of December 29, 1975, Exhibits "A" and "H" respectively, were unfounded and not factual.

28. The defendants, the CITY OF BOCA RATON, DONALD CRAWFORD, and WILLIAM K. HOWELL, continued to maliciously investigate the plaintiff. The defendant, RICHARD SHERER, a detective with the City of Boca Raton Police Department was assigned fulltime by the defendant, the CITY OF BOCA RATON, to the defendant's, WILLIAM K. HOWELL, City Attorney's office to perform the investigation against your plaintiff.

29. Sometime thereafter, the defendants, the CITY OF BOCA RATON, WILLIAM K. HOWELL, DONALD CRAWFORD, and RICHARD SHERER maliciously caused to be delivered to the State Attorney's office of Palm Beach County, statements from witnesses and a report in regards to a new charge unrelated to the specific four charges listed in the letter of termination of December 18, 1975. The statements and report were maliciously done so that they were incomplete, one-sided, and factually incorrect so as to convince the State Attorney to file charges against your plaintiff. Such charges and report were delivered during the pendancy of the aforereferenced suit of paragraph 28.

30. On or before November 17, 1977, an Information was filed by the State Attorney's office in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, charging the plaintiff with unlawful compensation in violation of Florida Statute 838.016 (1) a felony in the State of Florida. Said information was filed at the insistance of the City of Boca Raton and/or its agents and the defendants DONALD CRAWFORD, WILLIAM K. HOWELL, and/or RICHARD SHERER, and was based upon the maliciously prepared statements and report as aforesaid and further was a new

charge not based upon any of the original four charges contained in the letter of December 18, 1975 as amended in the letter of December 29, 1975, Exhibits "A" and "H" respectively.

31. The plaintiff surrendered himself to the Palm Beach County jail on November 17, 1977 where he was arrested and imprisoned for a period in excess of eight hours on the aforementioned charges.

32. On November 17, 1977, the defendent, the CITY OF BOCA RATON, maliciously called a news conference through the defendants, DONALD CRAWFORD and RICHARD SHERRER, to publically disseminate the fact of the plaintiff's arrest and imprisonment and further, to maliciously damage his good name and reputation in the community. Said articles were published that evening and subsequent morning newspapers.

33. On April 18, 1978, prior to trial, the Honorable William C. Williams, III, dismissed the aforereferenced charges against the plaintiff on the basis that the State was unable to amend its information to allege a proper charge due to a total lack of evidence and thus there was no probable cause for such a proceeding. Attached hereto and made a part hereof as Exhibit "N" is a copy of that order.

CAUSES OF ACTION

34. Paragraphs 1 through 33 are hereby incorporated and made a part of Counts One through Three as though fully set forth herein.

COUNT ONE

35. The actions of the defendants, each and every one of them, violated the Fifth and Fourteenth Amendments to the United States Constitution in that in acting in concert, the defendants deprived the plaintiff of property without due process of law. More specifically, the discharge of the plaintiff from his employment with the attended publicity and denial of the basis of the charges and dismissal and denial of

the opportunity to be heard deprived the plaintiff of the property interest in his employment and the liberty interest therein.

COUNT TWO

36. The actions of the defendants, each and every one of them, violated 42 USCA 1983 in that the defendants conspired to interfere with the plaintiff's Civil Rights as aforesaid by depriving him of his property and liberty interest in his employment.

COUNT THREE

37. The actions of the defendants, each and every one of them, caused the commencement of a criminal action against the plaintiff which was maliciously performed on the defendants' part for which there was a lack of probable cause and which was terminated successfully for the plaintiff.

38. As to Counts One and Two, the plaintiff had been continuously, for fifteen years, an electrical inspector for the City of Boca Raton. Plaintiff depended wholly upon his work as an electrical inspector for the support of himself and his family. As a direct and proximate result of the discharge and attended publicity of the discharge and a denial of his due process, the plaintiff has been exposed to public hatred, contempt, and ridicule; that the untrue statements have been a source of great embarrassment and humiliation to the plaintiff, thereby causing plaintiff to suffer distress of mind and mental anguish, the plaintiff's health has been affected and he has suffered and continues to suffer from nervousness and mental anguish and bodily pain; that the plaintiff's reputation for honesty and integrity has been impaired as well as his standing in his electrical profession and further, the plaintiff has been unable to secure employment; has lost his property interest in his job and career and his liberty interest therein; that the plaintiff has suffered a great wrong and injury in the excess of the sum of $1,000,000 by reason of which plaintiff has been damaged by the defendants in such sum.

39. As to Counts One and Two, the acts of the defendants as aforedescribed were intentionally and maliciously done or done with such recklessness and carelessness as to amount to a wanton disregard to the plaintiff's rights so that the conduct of the defendants is malicious and totally without justification and which by reason thereof the plaintiff is entitled to punitive damages in excess of the sum of $1,000,000.

40. As to Count Three, the plaintiff has been caused great humiliation, physical discomfort and mental anguish and his reputation and good name have been damaged in excess of the sum of $500,000.

41. As to Count Three, the plaintiff has been put to expense in the amount of $10,000 for employment of counsel in connection with the charges brought by the defendant.

42. As to Count Three by reason of the aforementioned acts of the defendant, by and through its agents and employees acting within the scope of employment, plaintiff has suffered a loss of earnings and earning power to his damage in excess of the sum of $500,000.

43. As to Count Three by reason of the willful and malicious acts of the defendants, as set forth above, the plaintiff is entitled to punitive damages in the sum of $1,000,000.

WHEREFORE, the plaintiff respectfully prays the Court to:

1. Take jurisdiction of this cause.

2. Grant compensatory damages in the sum in excess of $1,000,000 for damages sustained on Counts One and Two.

3. Grant compensatory damages in a sum in excess of $1,010,000 for damages sustained on Count Three.

4. Grant punitive damages in a sum in excess of $1,000,000 for damages sustained on Counts One and Two.

5. Grant punitive damages in a sum in excess of $1,000,000 for damages sustained on Count Three.

6. Grant such other relief as the Court deems proper and just.

PLAINTIFF DEMANDS TRIAL BY JURY ON THE ISSUES SO TRIABLE.

/s/ _____
NEAL H. DENSMORE

/s/
RICHARD E. BOSSE
RAPPAPORT AND BOSSE
Squires Building – Suite 203
1300 Nort Federal Highway
Boca Raton, Florida 33432
(305) 368-2200 426-2163

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, this day personally appeared NEAL H. DENSMORE, who first by me being duly sworn says: That he is the Plaintiff in the above-styled cause; that he has read the foregoing Amended Complaint and has personal knowledge of the facts and matters set forth and alleged in it; and that each of the facts and matters set forth and alleged in it; and that each of the facts and matters are true and correct.

SWORN TO AND SUBSCRIBED before me this 16th day of February, 1981.

/s/ _____
NOTARY PUBLIC, STATE OF FLORIDA
At Large

My Commission Expires Oct. 23, 1982
Bondéd by American Fire & Casualty Company

I HEREBY CERTIFY that a copy hereof has been furnished D. CULVER SMITH, III, ESQUIRE, ADAMS, COOGLER, WATSON & SMITH, P.A., Attorneys for defendants, 322 First Street, P.O. Box 2069, West Palm Beach, Florida 33402, this 17th day of February 1981.

RAPPORT AND BOSSE
Attorneys for Plaintiff
Squires Building–Suite 203
1300 North Federal Highway
Boca Raton, Florida 33432

(305) 368-2200

/s/ By: _____
Richard E. Bosse

APPENDIX B

No. 79-8375-CIV-JCP
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,	)
Plaintiff,	)
v	)
CITY OF BOCA RATON, FLORIDA: DONALD R. CRAWFORD, individually and as City Manager of the City, WILLIAM K. HOWELL, individually and as City Attorney of the City, RICHARD SHERER, individually and as Police Officer and Detective of the City.	)
Defendants.	)

ANSWER TO AMENDED COMPLAINT

Defendants, CITY OF BOCA RATON, WILLIAM K. HOWELL, and RICHARD SHERER, answer the Plaintiff's Complaint saying:

1. Paragraphs 1, 2, 3, 4, 10, 13, 14, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 29, 30, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, and 43 are denied.

2. Paragraphs 5, 6, 7, 8, 9, 11, 12, 15, 21, and 26 are admitted.

3. Paragraph 31 is neither admitted nor denied as these Defendants are without knowledge of the allegations.

4. All responses given for Paragraphs 1 through 33 are realleged herein in response to Paragraph 34.

AFFIRMATIVE DEFENSES

5. All acts and actions of all Defendants were done in full and complete compliance with all applicable laws.

6. All acts and actions by all Defendants were done in good faith and thus, all Defendants are cloaked with qualified immunity.

7. This action is barred by the Statute of Limitations. Chap. 95, Fla. Stat.

8. This action is barred under the doctrines of res judicata and collateral estoppel.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to RICHARD E. BOSSE, ESQ., Rappaport and Bosse, Squires Building, Suite 203, 1300 North Federal Highway, Boca Raton, Florida 33432; this 20th day of AUGUST, 1981.

ADAMS, COOGLER, WATSON & MERKEL, P.A.
322 First Street, P.O. Box 2069
West Palm Beach, FL 33402
(305) 659-7200

By _____
J. BURKE CULLER, JR.

APPENDIX C

No. 79-8375-CIV-JCP
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,	)
Plaintiff,	)
v	)
CITY OF BOCA RATON, FLORIDA: DONALD R. CRAWFORD, individually and as City Manager of the City, WILLIAM K. HOWELL, individually and as City Attorney of the City, RICHARD SHERER, individually and as Police Officer and Detective of the City.	)
Defendants.	)

ANSWER TO AMENDED COMPLAINT BY DEFENDANT DONALD CRAWFORD

Defendant, DONALD CRAWFORD answers the Plaintiff's Amended Complaint saying:

1. Paragraphs 1, 2, 3, 4, 10, 13, 14, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 29, 30, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, and 43 are denied.

2. Paragraphs 5, 6, 7, 8, 9, 11, 12, 15, 21, and 26 are admitted.

3. Paragraph 31 is neither admitted nor denied as these Defendants are without knowledge of the allegations.

4. All responses given for Paragraphs 1 through 33 are realleged herein in response to Paragraph 34.

AFFIRMATIVE DEFENSES

5. All acts and actions of all Defendants were done in full and complete compliance with all applicable laws.

6. All acts and actions by all Defendants were done in good faith and thus, all Defendants are cloaked with qualified immunity.

7. This action is barred by the Statute of Limitations. Chap. 95, Fla.Stat.

8. This action is barred under the doctrines of res judicata and collateral estoppel.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to RICHARD E. BOSSE, ESQ., Rappaport and Bosse, Squires Building, Suite 203, 1300 North Federal Highway, Boca Raton, Florida 33432; this 2nd day of NOVEMBER, 1981,

ADAMS, COOGLER, WATSON & MERKEL, P.A.
322 First Street – P.O. Box 2069
West Palm Beach, Florida 33402
(305) 659-7200

By _____
J. BURKE CULLER, JR.

APPENDIX D

No. 79-8375-CIV-JCP
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,)
Plaintiff,)
v)
CITY OF BOCA RATON, FLORIDA:)
DONALD R. CRAWFORD, individually)
and as City Manager of the City,)
WILLIAM K. HOWELL, individually)
and as City Attorney of the City,)
RICHARD SHERER, individually and)
as Police Officer and Detective of the)
City.)
)
Defendants.)

Article XIII, §2, of the Personnel Rules and Regulations of the City of Boca Raton reads as follows:

Grounds for Removal: The City Manager may, for cause, remove any employee in the classified service, however, in no instance may an employee be removed from his position because of political or religious opinions or affiliations, except if the employee has become a member of the Communist Party or has been found in violation of the City's Code of Ethics.

APPENDIX E

No. 79-8375-CIV-JCP
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,)
Plaintiff,)
v)
CITY OF BOCA RATON, FLORIDA:)
DONALD R. CRAWFORD, individually)
and as City Manager of the City, and)
WILLIAM K. HOWELL, individually)
and as City Attorney of the City.)
)
Defendants.)

If the Defendants reasonably believed that they were acting by authority of a valid state law or county rule or regulation, and acted in good faith on the basis of this belief, that their reasonable belief and good faith action constitutes a defense to the Plaintiff's claim, even though the state law or county rule or regulation may have been invalid.

APPENDIX F

No. 79-8375-CIV-JCP
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,)
Plaintiff,)
v)
CITY OF BOCA RATON, FLORIDA:)
DONALD R. CRAWFORD, individually)
and as City Manager of the City, and)
WILLIAM K. HOWELL, individually)
and as City Attorney of the City.)
)
Defendants.)

At a minimum, due process requires that a person have notice and an opportunity to be heard before a property or liberty interest is taken. The fundamental requisite of due process is the opportunity to be heard. The plaintiff must have been heard at a meaningful time in a meaningful manner, appropriate to the nature of the case. It is up to you, the jury, to determine whether under the circumstances of this case, plaintiff received adequate notice and hearing on his termination as to allow him to be heard at a meaningful time in a meaningful manner. In making this determination, you may take into account whether plaintiff had an opportunity to present his side of the story and the fairness and impartiality of the tribunal or tribunals which held the hearing, and any other factor you deem important to plaintiff's right to a fair hearing.

APPENDIX G

No. 79-8375-CIV-JCP
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,)
Plaintiff,)
v)
CITY OF BOCA RATON, FLORIDA:)
DONALD R. CRAWFORD, individually)
and as City Manager of the City, and)
WILLIAM K. HOWELL, individually)
and as City Attorney of the City.)
)
Defendants.)

Does an employee of the City who has received a letter of termination have the right to a *private* review three (3) days from the date the City Manager received the employee's request for review? Does the employee have the right to above review before the press is informed of charges?

Foreman Georgia Tylander

/s/ Georgia Tylander

APPENDIX H

No. 79-8375-CIV-JCP
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,)
Plaintiff,)
v)
CITY OF BOCA RATON, FLORIDA:)
DONALD R. CRAWFORD, individually)
and as City Manager of the City, and)
WILLIAM K. HOWELL, individually)
and as City Attorney of the City.)
)
Defendants.)

Court Exhibit 3

Your first set of questions Court Exhibit 1 seems to ask: what type of hearing is a city employee entitled to and in what manner should this hearing be held before he is terminated (or, before he is deprived of a liberty or a property interest, as those interests are defined in the Court's instructions).

Where the dismissal of a government employee is accompanied by a charge against him that might seriously damage his standing or associations in his community, the employee is entitled to reasonable notice of the charges made against him and the opportunity for a hearing at which the employee could refute the charges and publicly clear his name. The hearing must be held at a meaningful time and in a meaningful manner. What is meaningful under the circumstances of the case is for you as judges of the facts to determine.

Thus, whether the review should be private or public, or whether the press should be informed at this or that time, and at what time the hearing should be held – – are all questions for you to decide.

APPENDIX I

No. 79-8375-CIV-JCP
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,)
Plaintiff,)
v)
CITY OF BOCA RATON, FLORIDA:)
DONALD R. CRAWFORD, individually)
and as City Manager of the City, and)
WILLIAM K. HOWELL, individually)
and as City Attorney of the City.)
)
Defendants.)

VERDICT

We, the jury, return the following verdict:

1. Do you find that the Defendant, Donald Crawford, is liable to the Plaintiff, Neal Densmore, for the violation of the Plaintiff's federal constitutional rights?

YES _____ NO X

2. Do you find that the Defendant, William K. Howell, is liable to the Plaintiff, Neal Densmore, for the violation of the Plaintiff's federal constitutional rights?

YES _____ NO X

3. Do you find that the Defendant, City of Boca Raton, is liable to the Plaintiff, Neal Densmore, for the violation of the Plaintiff's federal constitutional rights?

YES _____ NO X

4. Do you find that the Defendants are liable to the Plaintiff, Neal Densmore, for conspiring to violate the Plaintiff's federal constitutional rights?

YES _____ NO X

If your answers to Questions 1 through 4 are all "NO", then go no further than to date and sign this verdict form. If any of your answers to Questions 1 through 4 are "YES", then answer Questions 5 and 6.

5. Do you find that the Defendant, Donald Crawford, acted in "good faith" in his handling of the termination of the Plaintiff's employment with the City of Boca Raton?

YES _____ NO _____

6. Do you find that the Defendant, William K. Howell, acted in "good faith" in his handling of the termination of the Plaintiff's employment with the City of Boca Raton?

YES _____ NO _____

7. What is the total amount, in dollars, of Plaintiff, Neal Densmore's, damages caused by the incident in question?

$ _____ .

SO SAY WE ALL this 24 day of February, 1983.

/s/ _____
Foreperson

APPENDIX J

JUDGMENT ON JURY VERDICT
No. 79-8375-CIV-JCP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NEAL H. DENSMORE,)
Plaintiff,)
v)
CITY OF BOCA RATON, FLORIDA)
DONALD R. CRAWFORD, individually)
and as City Manager of the City, and)
WILLIAM K. HOWELL, individually)
and as City Attorney of the City.)
)
Defendants.)

This action came on for trial before the Court and a jury, Honorable JAMES C. PAINE, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged

The plaintiff take nothing and that the action be dismissed on the merits.

Dated at West Palm Beach, Florida, this 2nd day of March, 1983.

/s/_____
Clerk of Court
SVAVA RINGHEIM, DEPUTY CLERK

cc: Richard E. Bosse, Esq.
J. Burke Culler, Jr., Esq.

APPENDIX K

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 83-5341

D.C. Docket No. 79-08375–CIV–JCP

NEAL H. DENSMORE,

Plaintiff-Appellant,

versus

CITY OF BOCA RATON, FLORIDA,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Florida

(October 15, 1984)

Before FAY and VANCE, Circuit Judges, and MacMahon*, District Judge.

PER CURIAM:

affirmed. See Circuit Rule 25.

"Costs taxed against plaintiff-appellant."

---

* Honorable Lloyd F. MacMahon, U. S. District Judge for the Southern District of New York, sitting by designation.

Judgment Entered: October 15, 1984
For the Court: Spencer D. Mercer, Clerk

/s/ By: _____
Deputy Clerk

ISSUED AS MANDATE: DEC 06 1984

APPENDIX L

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 83-5341

NEAL H. DENSMORE,

Plaintiff-Appellant,

versus

CITY OF BOCA RATON, FLORIDA, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion October 15 , 11 Cir., 1984 F. 2d).

(NOV 21 1984)

Before FAY and VANCE, Circuit Judges, and MacMahon*, District Judge.

PER CURIAM:

(X) The Petition for Rehearing is DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/s/ _____

United States Circuit Judge

*Honorable Lloyd F. MacMahon, U.S. District Judge for the Southern District of New York, sitting by designation.